

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
ERIC A. FARRIS,) **Supreme Court #SC87064**
)
Respondent.)

INFORMANT'S BRIEF

OFFICE OF
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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF JURISDICTION.....	3
STATEMENT OF FACTS	4
PROCEDURAL HISTORY OF DISCIPLINARY CASE	4
FACTS UNDERLYING DISCIPLINARY CASE	6
<i>Complainant’s Legal Dispute with Homeowner’s Association.....</i>	<i>6</i>
<i>Evidence Supporting Rule 4-1.4(b) Violation by Respondents</i>	<i>7</i>
<i>Hammond and Farris and the Rule 4-1.1 and 4-1.3 Violations.....</i>	<i>7</i>
<i>by Respondent Hammond</i>	<i>7</i>
<i>Evidence Supporting Rule 4-1.4(a) Violation</i>	<i>14</i>
<i>by Respondents Hammond and Farris</i>	<i>14</i>
POSTSCRIPT	17
DISCIPLINARY HISTORY.....	17
POINTS RELIED ON	19
I.....	19
POINTS RELIED ON	20
II	20
ARGUMENT	21
I.....	21
ARGUMENT	28
II	28
CONCLUSION.....	30
CERTIFICATE OF SERVICE.....	31
CERTIFICATION: RULE 84.06(C)	31
APPENDIX – VOLUME I.....	32
TABLE OF CONTENTS	32
APPENDIX – VOLUME II.....	34
TABLE OF CONTENTS	34

TABLE OF AUTHORITIES

CASES

Bernstein v. State Bar of California, 50 Cal3d 221, 786 P2d 352 (1990).....19, 25

OTHER AUTHORITIES

2 G. Hazard & W. Hodes The Law of Lawyering § 5.1: 101 (1998 Supp.)19, 24

ABA Standards for Imposing Lawyer Sanctions (1991 ed.) 19, 20, 26

RULES

Rule 4-1.4(a)(b)..... 19

Rule 4-5.1 19, 22, 25

Rule 4-8.4(a)4, 5, 19, 24

Rule 5.1619, 21

STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Procedural History of Disciplinary Case

On February 10, 2003, the Office of Chief Disciplinary Counsel received a complaint from Gerard Meier against Respondents Eric Farris and Reidar Hammond. Respondents were each advised by letter dated February 26, 2003, that investigation files had been opened on the basis of Mr. Meier's complaint.

On December 4, 2004, an information was filed charging Respondents with the following rule violations.

1. Both Respondent Farris and Respondent Hammond were charged with committing professional misconduct under Rule 4-8.4(a) as a result of violating Rule 4-1.4(b) in that they "failed to communicate to the Meiers that their assessment of the merits of the Meiers' case substantially changed after the defendant filed its motion for summary judgment, thereby denying the Meiers the opportunity to make an informed decision about incurring further and additional legal fees and expenses." **App. 6-7.**

Rule 4-1.4(b) reads: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

2. Only Respondent Hammond was charged with committing professional misconduct under Rule 4-8.4(a) as a result of violating Rule 4-1.1 and 4-1.3 in that he filed an untimely response to a summary judgment

motion, and the response that was filed failed to comply with the minimum requirements specified by Rule 74.04(c). **App. 7.**

Rule 4-1.1 reads: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Rule 4-1.3 provides: “A lawyer shall act with reasonable diligence and promptness in representing a client.”

3. The information charged both Respondents with professional misconduct under Rule 4-8.4(a) as a result of violating Rule 4-1.4(a) and 4-8.4(c) in that each of them failed, over a several month period of time, despite repeated requests from Mr. Meier, to provide Mr. Meier with a copy of the judge’s order issued in his case. **App. 7.**

Rule 4-1.4(a) reads: “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

Rule 4-8.4(c) reads: “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Answers were filed by each Respondent. **App. 16-19, 449-452.** The Respondents each denied violation of the charged rules.

On March 2, 2005, the advisory committee chair appointed a disciplinary hearing panel to hear the case. **App. 20.** Hearing was conducted on May 13, 2005. The panel issued its decision on June 27, 2005. **App. 24-31.** The panel concluded Respondent Farris violated no charged rules and recommended dismissal of the information against him. **App. 28-30.** The panel concluded Respondent Hammond violated Rules 4-1.1, 4-1.3, and 4-1.4(a), and recommended an admonition, which the panel issued to him on June 24, 2005. **App. 29-31, 453.** By letter dated July 11, 2005, disciplinary counsel advised Respondents Farris and Hammond that the office did not concur in the panel's decision. **App. 32.** The record was filed with the Missouri Supreme Court on August 23, 2005.

Facts Underlying Disciplinary Case

Complainant's Legal Dispute with Homeowner's Association

In April of 1998, Big Bear Resort and Marina, L.L.C., combined lots 242 and 243 in Yogi Bear Jellystone Park Camp, located in Taney County, Missouri, and recorded the combined lots as Lot 242 in the county recorder's office. **App. 305-306.** In June of 1998, Gerard and Kimberly Meier purchased what had become combined lot 242 and lot 243. **App. 306.** In August of 1998, the Meiers filed a replat in the county recorder's office purporting to combine the already combined lot 242 with lot 243. **App. 283.**

In September of 1999, Big Bear Resort and Marina, L.L.C., sold the Yogi Bear Jellystone Camp Resort Subdivision to Clevenger Branch Membership Corporation. **App. 306.** Clevenger Branch, a homeowners association, thereafter charged the Meiers

dues for two lots. **App. 69 (T. 143-144)**. In October of 2000, when the Meiers failed to pay the multiple lot assessment, Clevenger Branch attached a lien to the property. **App. 293-295**.

Evidence Supporting Rule 4-1.4(b) Violation by Respondents

Hammond and Farris and the Rule 4-1.1 and 4-1.3 Violations

by Respondent Hammond

The Meiers sought legal help in resolving the assessment dispute from a lawyer named Dayrell Scrivener, who practiced law in what was then known as Farris & Associates, L.L.C. **App. 37 (T. 17)**. Mr. Scrivener advised Mr. Meier that he thought the Meiers had a strong case, which he estimated could be settled for an expenditure of about \$1,500.00 for attorney fees. **App. 103**. When Mr. Scrivener left the Farris firm, **App. 105**, Mr. Meier sought assurance from Respondent Farris, who took over the case, that he concurred with Mr. Scrivener's assessment of the Meiers' case as "strong," and that the case would not cost appreciably more than \$1,500.00 to resolve. Mr. Meier sought that assurance from Mr. Farris because the amount at issue was, at most, a \$1,500.00 annual assessment. **App. 38 (T. 19-21)**. Mr. Meier did not want to spend much more on legal fees than it would cost him to resolve the matter with the association on his own. **App. 38 (T. 20-21)**.

Respondent Farris answered Mr. Meier's request for reassurance by saying that he agreed with Mr. Scrivener's opinion that the Meiers had a strong case. He assured Mr.

Meier that a favorable verdict or settlement was likely to come out of the lawsuit. Mr. Farris also agreed with Mr. Scrivener's previous opinion that, "if the other side takes our case seriously, the case could be settled with the attorney fee costing approximately \$1,500.00." **App. 103.** Mr. Farris thought the Meiers' case had merit because a lot of other lot owners in the Jellystone subdivision had been allowed to consolidate lots. **App. 90 (T. 228-229).** Mr. Farris knew Mr. Meier was concerned about limiting his costs. **App. 90 (T. 229).** The Meiers signed a fee agreement with Mr. Farris in July of 2001. **App. 254-255.**

On July 30, 2001, Mr. Farris filed in Taney County Circuit Court a two count petition on behalf of the Meiers against Clevenger Branch. **App. 442-446.** In October of 2001, Mr. Farris filed an amended petition on the Meiers' behalf. **App. 415-431.** As the case proceeded, and invoices for legal fees were submitted to the Meiers, Mr. Meier questioned Mr. Farris about the mounting legal fees. **App. 40 (T. 26-27).** In November of 2001, Meier again asked Farris for assurance that there was "light at the end of this tunnel and we can expect to settle this matter soon and as budgeted," inasmuch as the fees were nearing \$2,000.00. **App. 456.**

In April of 2002, Respondent Farris hired Respondent Hammond to work as an associate lawyer for the Farris law office. **App. 73 (T. 159), 76-77 (T. 173-174).** Mr. Hammond had been licensed in Colorado in 1990 and in Missouri in 2000. **App. 76 (T. 172-173).** In April, Mr. Farris assigned responsibility for the Meiers' file to Mr. Hammond. **App. 73 (T. 159).** Mr. Hammond first contacted Mr. Meier in May. **App. 46 (T. 52).** Mr. Meier understood that Respondent Farris was transferring the case to Mr.

Hammond to handle, **App. 46 (T. 53)**, but Mr. Meier did not understand that to mean that Mr. Farris had no further responsibility to the Meiers. He assumed that Hammond and Farris would work as a team to represent him, as a previous letter from Mr. Farris had described his firm's approach to representation as a "team approach." **App. 69 (T. 145), 105.** Mr. Farris remained attorney of record for the Meiers until June of 2003 and never advised Mr. Meier that he was not still representing him after Mr. Hammond became involved in the case. **App. 67 (T. 136).**

The defendant homeowner's association filed a motion for summary judgment, supported by sixteen exhibits, on May 10, 2002. **App. 238-343.** Mr. Hammond began reviewing the motion on May 11, 2002. **App. 77 (T. 176).** Mr. Meier did not know anything of any importance had occurred in his case until he was contacted in late May, and that contact was to tell the Meiers that they were going to be deposed. **App. 40-41 (T. 29-30), 46 (T. 52).** Mr. and Mrs. Meier met Mr. Hammond about an hour before their depositions were taken on June 6, 2002. **App. 40-41 (T. 29-30).** Mr. Hammond used the meeting before the depositions commenced to explain depositions to the Meiers and prepare them for being deposed. **App. 41 (T. 30), 57 (T. 95), 71 (T. 153), 74 (T. 162-163).** Mr. Meier does not remember any discussion about a motion for summary judgment, or any discussion of the general status of the lawsuit, arising at all during the pre-deposition meeting with Mr. Hammond. **App. 57 (T. 94-95), 66 (T. 133).** The Meiers and Mr. Hammond did not discuss the depositions or the case after the depositions were completed. **App. 72 (T. 155-156).**

The Meiers' response to the motion for summary judgment was due to be filed on June 10, 2002. **App. 77 (T. 175)**. The response was filed, without any accompanying exhibits, discovery, or affidavits, on June 20, 2002. **App. 77 (T. 175), 79 (T. 182)**. No motions requesting extension of time or other relief of any kind on the Meiers' behalf were filed prior to June 20. **App. 79 (T. 182)**. Mr. Hammond had not contacted Mr. Meier about the necessity of controverting the motion with affidavits or other evidence. **App. 79 (T. 182)**. Mr. Meier does not even recall knowing that a summary judgment motion had been filed in the case until late June of 2002. **App. 41 (T. 31), 57 (T. 95-97)**.

Mr. Hammond filed the response to the summary judgment motion ten days out of time because he had been unable to formulate a viable response. **App. 74 (T. 163), 77 (T. 175), 87 (T. 214)**. Hammond saw that the covenants, attached to the summary judgment motion when it was filed, required the Meiers to go through a prescribed process to consolidate their lots, and that they had not followed the procedure. **App. 73 (T. 160-161)**. Mr. Hammond's opinion that the Meiers could not prevail coalesced after the Meiers' depositions were taken in early June. **App. 75 (T. 166)**.

Mr. Farris required his associates to provide him with a weekly or biweekly statement about what was going on in each of the files being handled by the associate. **App. 85 (T. 206)**. The case status memo for June 8 regarding the Meier file stated "Did depos this past week, am trying to get settlement authority." **App. 86 (T. 212 – 213)**. Mr. Hammond discussed the difficulty he was having coming up with a response to the summary judgment motion with Mr. Farris, probably shortly after the depositions had been taken on June 6. Hammond relayed to Farris that the "covenants were the

covenants,” and he did not know how to get around them. **App. 77 (T. 175)**. Farris directed Hammond to a case Farris had recently handled wherein he said he had succeeded in defeating a summary judgment motion by use of equitable arguments. **App. 77 (T. 175)**. Farris suggested to Hammond that he follow the example Farris had set in *Young v. Archer*,¹ where Farris “successfully defeated a Motion for Summary Judgment with no affidavits and based only upon an equitable defense.” **App. 92 (T. 236-237)**.

According to a letter dated March 24, 2003, signed by both Mr. Farris and Mr. Hammond, facts had been “discovered in the course of representation, which undermined Mr. Meier’s position so gravely that led us to conclude that the likelihood of success at trial of the case was virtually nil, that the case would be disposed of in favor of the defendant on summary judgment, and that Mr. Meier needed to settle the case while settlement was still possible.” **App. 106**.

Neither Mr. Hammond nor Mr. Farris communicated to Mr. Meier that the lawyers had come to the realization that the Meiers were likely to lose the case. **App. 41 (T. 31-33)**. Respondent Hammond talked with Mr. Meier by telephone on June 10, but Mr. Meier recalls the conversation being about whether Meier should go out of town on vacation, inasmuch as Meier did not want to leave if anything was expected to happen in his case. **App. 58 (T. 99), 66 (T. 133)**. Mr. Hammond told him nothing was planned, so he should go ahead and leave. **App. 58 (T. 99-100)**. Mr. Meier does not recall any mention during the June 10 telephone call about the advisability of settling the case in

¹ *Young v. Ernst*, 113 S.W.3d 695 (Mo. App. 2003).

lieu of going to trial, or anything about a summary judgment motion. **App. 58-59 (T. 101-103), 66 (T. 133).**²

On June 12, counsel for the homeowner's association filed a notice requesting hearing on its motion for summary judgment. It was noticed to be heard on June 20. Mr. Hammond did not attempt to make Mr. Meier aware of the hearing until the evening of June 19. **App. 59 (T. 104).** The evening before the hearing, June 19, Mr. Hammond put together a response to the summary judgment motion, which was filed the next day. **App. 74 (T. 163).** He called the Meiers on the evening of June 19 to ask whether he could fax them what he had prepared and to get them to sign a verification to file with the response. **App. 74 (T. 163).**³ When Mr. Hammond remembered the Meiers were out of town, he left a message on their telephone answering machine about the next day's hearing. **App. 58 (T. 98).** The message explained what a summary judgment hearing was, that Mr. Hammond would oppose the motion, and that Mr. Hammond expected to come out of the hearing with a good sense of how the judge would rule in their case. **App. 70 (T. 146).** This message, left on the Meiers' answering machine on June 19, is Mr. Meier's first recollection of knowing anything about a summary judgment motion in the case. **App. 59 (T. 103).**

² Mr. Hammond recalls talking with Mr. Meier during the June 10 telephone call about trying to get the case settled. **App. 75 (T. 166).**

³ Mr. Hammond thought that a verified response was essentially the same thing as submitting affidavits with the response. **App. 88 (T. 218).**

At the hearing on June 20, the presiding judge, Judge Eiffert, verbally indicated that he was going to rule against the Meiers. **App. 74 (T. 165)**. In a telephone conversation following the Meiers return from vacation around June 25, Mr. Hammond relayed to Mr. Meier that he thought the Meiers were getting screwed, but that the indication from the hearing was that the Meiers were going to lose the case and that they should settle while they could. **App. 56-57 (T. 96-99), 65 (T. 127-128), 74-75 (T. 165-166)**.

Until that time, in late June 2002, Mr. Meier had had no indication from his lawyers that anything had changed in the case. Mr. Meier returned from vacation confident he had a strong case, and still fully expecting to go to trial and prevail. **App. 41 (T. 31-33), 57 (T. 95), 65 (T. 127-128)**. Had his lawyers apprised him that their evaluation of the case had changed after the summary judgment motion had been filed, he would have “wanted to regroup and cut my expenses at that point. I mean, there would have been no point in going through depositions and additional expenses if my own attorney advised me that I didn’t have a viable case.” **App. 42 (T. 34-35)**. The Meiers were billed, and paid, approximately \$1,749.00 to the Farris law firm after the motion for summary judgment was filed. **App. 54 (T. 83), 457-461**.

In an e-mail sent to Respondent Farris by Mr. Meier dated July 8, 2002, Meier expressed dismay that his once “strong case” had disappeared, that he had already paid twice the initial estimate for attorney fees, and asked Mr. Farris “what discoveries were made that has [sic] weakened my case and caused you to advise that the best resolution may be to separate my lots.” **App. 121**.

Evidence Supporting Rule 4-1.4(a) Violation

by Respondents Hammond and Farris

After the hearing on the summary judgment motion, Mr. Hammond and the homeowners association's lawyer worked out a proposed compromise whereby: Mr. Meier would seek approval from the Taney County planning and zoning board to break the lots out into two distinct lots; the Meiers would owe the assessment on only one lot up until the date the lawsuit had been filed; the Meiers would pay the assessment owing for two lots thereafter. **App. 75 (T. 166-167, 169), 118.** The terms of the proposed settlement were forwarded to Mr. Meier in early July. **App. 66 (T. 132), 75 (T. 166-167).** Given the news that summary judgment was likely to be entered, Meier did not disagree with the terms of the proposal, but was very doubtful that Taney County authorities would allow him to separate the lots. **App. 60 (T. 108), 71 (T. 151).** In Mr. Meier's mind, he could not "authorize" a settlement, nor was there a "settlement," until county authorities agreed to go along with what was being proposed. **App. 67 (T. 136-137), 76 (T. 170).**

On July 12 or 13, Mr. Hammond was in the Taney County Courthouse on a matter other than Mr. Meier's. While there, Mr. Hammond observed a docket entry made by Judge Eiffert in Mr. Meier's case. **App. 75 (T. 167), 88 (T. 219).** The docket entry read as follows:

Defendant filed on 5-10-02 a Motion For Summary Judgment supported by an affidavit of its secretary and 16 exhibits. Sup. Court Rule 74.04(c)(2)

required Plaintiff to file a response to the motion within 30 days. Defendant noticed it's [sic] motion for hearing for 6-20-02, 40 days after the motion was filed. On that date, Plaintiff filed their response to the Motion with the Court. The response raises additional claimed facts, but, these facts are not supported by any exhibits or affidavits nor is there any reference to pleadings or discovery, all as required by Sup. Court Rule 74.04(c)(2). The Court finds that there is no factual dispute and Deft. is entitled to summary judgment. Deft's attorney to submit formal judgment to the Court. **App. 124.**

A letter reciting the docket entry set forth above was received at the Farris law office the following day. **App. 88 (T. 219).**

On returning to the office after seeing the foregoing docket entry, Mr. Hammond called Mr. Meier and told him summary judgment was being entered against him. He urged Meier to agree to the proposed settlement worked out between him and the homeowners association's attorney while they could still do so. **App. 42 (T. 36), 75 (T. 167).** Mr. Meier thereafter applied to county authorities to separate the lots, but his efforts were unsuccessful. **App. 61 (T. 112).**

On October 19, 2002, Mr. Meier e-mailed Mr. Farris about his lack of success in getting the county to allow him to separate the lots. He noted, in the e-mail to Mr. Farris, "I have not received a copy of the summary judgment from Judge Eiffert. I am requesting a copy of this summary [judgment] before I make a decision on how to proceed. I have left a voice mail message with Mr. Hammond and would appreciate a

call.” **App. 120.** On October 24, 2002, Mr. Meier wrote Mr. Hammond a letter about the unsuccessful lot separation efforts. He noted, “I am expecting a copy of the summary judgment from Judge Eiffert and your response.” **App. 462.** In a November 1, 2002, e-mail from Mr. Meier to Mr. Hammond, Meier states “I also expected to receive a copy of Judge Eifferts summary judgment and your response opposing motion for summary judgment. Please send the requested documents and give me an update.” **App. 120.**

On December 9, 2002, Mr. Hammond wrote Mr. Meier a letter advising that the homeowners association’s attorney had agreed to try to get the judge to order county officials to accept the lot separation agreed to by the parties. The body of the letter says nothing about the summary judgment order, but does reflect, at the bottom left corner of the letter, that the order was enclosed with the letter. **App. 463.** Mr. Meier saw the July 8 order for the first time when he received the December 9, 2002, letter. **App. 43 (T. 39), 62 (T. 117).** Mr. Meier was “shocked” when he read the judgment entry. He felt ripped off and like he had not been properly represented, because the entry said Mr. Meier’s evidence had not been properly presented to the court. **App. 43 (T. 40).**

It was standard practice at Farris & Associates for the administrative staff to send copies of incoming documents to clients before the lawyers were even given the mail. **App. 76 (T. 171), 465.** Mr. Farris emphasized perfection in the performance of tasks. **App. 468.** Mr. Hammond assumed the order had been sent to Mr. Meier pursuant to office procedures. When he got the October e-mail from Mr. Meier, he asked his secretary to send the judgment entry to Meier. **App. 76 (T. 171).**

Mr. Farris also assumed the judgment entry had been sent, and he was upset when Meier complained that he still didn't have it. **App. 94 (T. 242-243)**. In a November 8, 2002, memo to Farris, Hammond stated the order had been sent to Meier. **App. 94 (T. 242)**. Neither Farris nor Hammond personally saw to the enclosing of the judgment entry in a mailing to Meier until Hammond did so with the December 9 letter. **App. 79 (T. 184), 97 (T. 254)**.

Postscript

The court's docket sheet shows no activity in the case from July of 2002 until April 30, 2003, when Meier began filing pro se motions with the court. On May 1, 2003, the court issued an order asking the lawyers why no judgment had been timely submitted to the court for its approval. On May 6, 2003, Mr. Hammond, on behalf of Farris and Associates, filed a motion to withdraw, citing a "breakdown in the attorney/client relationship . . . to such a degree that effective representation is no longer possible." **App. 184-185**. On May 7, 2003, the homeowners association's counsel submitted a proposed judgment entry. **App. 170-174**. After hearing on June 5, Hammond and Farris were granted leave to withdraw. **App. 162**. Judgment was entered on behalf of the homeowners association on June 9, 2003. **App. 158**. The final judgment accomplished the compromised goal of providing the Meiers with two lots. **App. 69 (T. 144)**.

Disciplinary History

Mr. Farris was admitted to the bar in 1994. **App. 88 (T. 221)**. He was admonished in February of 1998 for violation of Rules 4-1.4 (communication), 4-1.16(d)

(improper withdrawal), and 4-8.4(d) (conduct prejudicial to the administration of justice).

The admonition was based on Mr. Farris' failure to provide a client with adequate notice of his intention to withdraw, and for providing the court with inaccurate information in the motion to withdraw. **App. 469-470.**

Mr. Hammond, admitted to Missouri's bar in 2000, has no disciplinary history.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENTS FARRIS AND HAMMOND BECAUSE THEY VIOLATED THE COMMUNICATION RULE (4-1.4(a)(b)) IN THAT THEY DID NOT COMMUNICATE TO CLIENT MEIER THAT A MOTION FOR SUMMARY JUDGMENT FILED BY OPPOSING COUNSEL SIGNIFICANTLY LOWERED THE CLIENT'S LIKELIHOOD OF PREVAILING AND FAILED TO TIMELY PROVIDE A COPY OF THE DISPOSITIVE ORDER TO THE CLIENT DESPITE THE CLIENT'S MULTIPLE REQUESTS.

Bernstein v. State Bar of California, 50 Cal3d 221, 786 P2d 352 (1990)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

2 G. Hazard & W. Hodes The Law of Lawyering § 5.1: 101 (1998 Supp.)

Rule 4-1.4(a)(b)

Rule 4-5.1

Rule 4-8.4(a)

Rule 5.16

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT FARRIS BECAUSE HE, AT A MINIMUM, NEGLIGENTLY FAILED TO COMMUNICATE MATERIAL FACTS TO HIS CLIENT IN THAT THE CLIENT WAS NOT ADVISED OF THE STRENGTH OF THE OPPOSING PARTY'S MOTION FOR SUMMARY JUDGMENT AND WAS HARMED THEREBY BY THE ACCRUAL OF FEES AND EXPENSES HE COULD HAVE AVOIDED AND BY THE PROLONGING OF THE LEGAL DISPUTE, AND THE PRESENCE OF SEVERAL AGGRAVATING FACTORS, INCLUDING THAT RESPONDENT FARRIS HAS BEEN PREVIOUSLY ADMONISHED FOR VIOLATING RULE 4-1.4.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.4

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENTS FARRIS AND HAMMOND BECAUSE THEY VIOLATED THE COMMUNICATION RULE (4-1.4(a)(b)) IN THAT THEY DID NOT COMMUNICATE TO CLIENT MEIER THAT A MOTION FOR SUMMARY JUDGMENT FILED BY OPPOSING COUNSEL SIGNIFICANTLY LOWERED THE CLIENT'S LIKELIHOOD OF PREVAILING AND FAILED TO TIMELY PROVIDE A COPY OF THE DISPOSITIVE ORDER TO THE CLIENT DESPITE THE CLIENT'S MULTIPLE REQUESTS.

Rule 4-1.4(b) provides that “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” The information charges that Mr. Farris (and Mr. Hammond) failed to “communicate to the Meiers that their assessment of the merits of the Meiers’ case substantially changed after the defendant filed its motion for summary judgment.” The disciplinary hearing panel’s decision makes no findings of fact specific to the Rule 4-1.4(b) charge against Respondent Farris. See Rule 5.16. The decision, which is advisory to the Court, concludes that Farris did not violate Rule 4-1.4(b) because, in a broad generalization that fails to address the specific facts charged, the panel concludes that Farris “communicated very well with Complainant while Respondent Farris was

primarily handling the file.” **App. 28.** In the preceding paragraph of the panel’s decision, the panel suggests that “Farris may well have violated 4-5.1 with respect to his responsibilities as supervising attorney,” but that “Farris was not charged with violation of that rule.” Informant respectfully disagrees with the foregoing legal analysis, which suggests that once a lawyer assigns a matter to a subordinate lawyer, his ethical liability is limited to Rule 4-5.1. The Court is urged to consider the following in determining whether the evidence supports the charge that Respondent Farris violated Rule 4-1.4(b).

Mr. Farris became the Meiers’ attorney of record by filing a petition on their behalf in July of 2001. At the outset of that relationship, Mr. Meier questioned Mr. Farris with some particularity as to whether Farris agreed with the Meiers’ previous lawyer’s assessment of the case as “strong,” and whether it was possible to bring the case to conclusion for an expenditure of attorney’s fees close to \$1,500.00, which is the amount Mr. Meier thought would resolve the dispute if he handled it on his own. Mr. Farris, to be sure, offered Mr. Meier no guarantees, as no lawyer can or should. The evidence is clear, however, that it was Mr. Farris to whom client Meier entrusted his concerns about pursuing the case and it was Mr. Farris who offered reassurance to client Meier about proceeding.

If anything, the heightened concern expressed by Meier to Farris at the outset of the representation raised the bar as to how much communication from Farris was necessary to satisfy the rule. The Comment to Rule 4-1.4 notes that “The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the

extent the client is willing and able to do so.” Meier’s expressed desire to resolve the legal matter entrusted to Farris for a limited expenditure of money, and his close questioning about the case thereafter, heightened Farris’ obligation to keep Meier “in the loop” regarding developments in the case. Whether and how to respond to a very strong motion for summary judgment was just the sort of development that required collaboration with the client.

The disconnect in the panel’s legal analysis comes in its implicit assumption that Farris became immunized from direct responsibility for ethical lapses when the file was “transferred” to Hammond in April. There can be no question but that the attorney-client relationship previously established among the Meiers and Mr. Farris continued after the file was assigned to Hammond. Most obviously, Farris filed the original petition on the Meiers’ behalf and remained as their attorney of record until allowed to withdraw by order issued in June of 2003. Even more importantly, the Meiers had a reasonable expectation that the attorney-client relationship with Farris survived the intra-office transfer of the file. Meier testified that he was aware of the file transfer, but that he assumed that Farris and Hammond would work together. Mr. Meier’s assumption was based on an earlier letter Farris had sent Meier to reassure Meier that Farris could take over the case upon Meier’s prior lawyer’s departure from the firm. In the letter, Mr. Farris describes his firm’s “team approach” to legal representation. If the “team approach” is good enough to justify retention of the client’s business, it should be sufficient to insure continuing primary ethical responsibility.

Rule 4-8.4(a), which makes it professional misconduct for a lawyer to violate a Rule of Professional Conduct, “reflects principles of direct personal liability.” 2 G. Hazard & W. Hodes The Law of Lawyering § 5.1: 101 (1998 Supp.). Informant produced evidence establishing Mr. Farris’ direct responsibility to satisfy the requisites of the communication rule vis-à-vis the Meier representation. Mr. Farris was the lawyer to whom Meier had expressed his concerns about proceeding with the case, and the lawyer who provided reassurance to Meier about proceeding. Mr. Farris, as well as Mr. Hammond, had a primary obligation to communicate to Mr. Meier the conclusion reached by Farris and Hammond that the “likelihood of success at the trial of the case was virtually nil.”

The motion for summary judgment, with sixteen supporting exhibits, was filed on May 10. The Meiers were produced for their depositions on June 6. Hammond’s case status memo to Farris for June 8 referenced an attempt to obtain settlement authority. Mr. Hammond discussed his difficulty in responding to the summary judgment motion with Mr. Farris shortly after the Meiers’ depositions were taken. Yet, when Mr. Meier returned from vacation in late June, he was shocked to learn, for the first time, about the drastic change in his lawyers’ faith in the outcome of the case. He justifiably asked Farris, in a July 8 e-mail, “what discoveries were made that . . . cause you to advise that the best resolution may be to separate my lots?” Mr. Farris had a direct ethical obligation, as the Meiers’ lawyer, to explain timely the changed perceptions about the viability of the case to the client, so the client could make informed decisions about how

to proceed. It was not an obligation that devolved solely to Mr. Hammond by virtue of the transfer of the file to the subordinate lawyer.

The lawyer in *Bernstein v. State Bar of California*, 50 Cal3d 221, 786 P2d 352 (1990), argued he could not be disciplined for his associate's failure to get assigned work done. The California Supreme Court disagreed, noting that an attorney who accepts a client's case necessarily assumes the responsibilities of the trust, even though it was not required that the lawyer do "all the research and prepare every pleading and motion" himself. 786 P.2d at 257. Mr. Farris' ethical obligations under the communication rule were not limited to those of a supervisory lawyer (4-5.1) by the mere expediency of transferring the file to Hammond.

The decision to charge Farris with violation of the communication rule, and not violation of the supervisory lawyer rule, was a conscious and deliberate pleading decision by Informant. A preponderance of evidence was adduced to establish Respondent Farris' violation of the Rule as a consequence of his direct professional responsibility, by way of his failure to explain, in a timely fashion, developments in the case to the extent reasonably necessary to allow Meier to make an informed decision about the representation. The fact that Rule 4-5.1 was not charged should have no bearing on whether Farris violated Rule 4-1.4(b).

Informant recommended public reprimand for each of the Respondents.⁴ Reprimand “declares the conduct of the lawyer improper, but does not limit the lawyer’s right to practice.” Rule 2.7, ABA Standards for Imposing Lawyer Sanctions (1991 ed.). The panel recommended dismissal of the information against Respondent Farris, who is charged with violating the communication rule. Because Informant believes the panel relied on faulty legal reasoning in making that recommendation, at least as to the charge under subpart (b) of Rule 4-1.4, Informant does not concur in dismissal of the information against Mr. Farris and puts the matter to the Court for resolution.

Turning to the charged Rule 4-1.4(a) violation, the panel concluded Respondent Farris “made reasonable efforts to see that the summary judgment docket entry got to Complainants after it was first brought to Respondent Farris’ attention that Complainants claim not to have received it.” **App. 29**. The evidence is that Meier specifically asked Farris on October 19, 2002, for a copy of the judgment entry, so Meier could “make a decision on how to proceed.” The undisputable fact of the matter is that after that direct entreaty by the client to Farris, the document did not make its way to Mr. Meier until after December 9. Rule 4-1.4(a) does not include the element of specific intent to violate the rule. The fact that the client specifically requested the document in mid-October for the very purpose for which the Rule applies (to allow the client to make informed

⁴ The recommendation for suspension was predicated on whether the panel concluded there was deceit involved in the delay in providing the client with the judge’s docket entry, which was very uncomplimentary to Respondents.

decisions), and that the document was not sent to Mr. Meier until mid-December establishes the violation.

ARGUMENT

II.

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT FARRIS BECAUSE HE, AT A MINIMUM, NEGLIGENTLY FAILED TO COMMUNICATE MATERIAL FACTS TO HIS CLIENT IN THAT THE CLIENT WAS NOT ADVISED OF THE STRENGTH OF THE OPPOSING PARTY'S MOTION FOR SUMMARY JUDGMENT AND WAS HARMED THEREBY BY THE ACCRUAL OF FEES AND EXPENSES HE COULD HAVE AVOIDED AND BY THE PROLONGING OF THE LEGAL DISPUTE, AND THE PRESENCE OF SEVERAL AGGRAVATING FACTORS, INCLUDING THAT RESPONDENT FARRIS HAS BEEN PREVIOUSLY ADMONISHED FOR VIOLATING RULE 4-1.4.

The sanctions analysis that led Informant to recommend public reprimand against Respondent Farris is as follows. Informant's evidence establishes violation of the communication rule, which implicates duties owed to clients. A lawyer's ethical duties to clients are the most important category of obligations. ABA Standards for Imposing Lawyer Sanctions, p. 5 (1991 ed.). At a minimum, Farris' violation of the Rule was negligent. The injury to the client that flowed from the violation was both monetary, in

the sense that Meier accrued and paid attorney fees and costs he may have chosen to avoid had he known his case had imploded, and intangible, in that Meier walked away from his first experience with the legal system with a very poor opinion of the profession.

A communication rule violation involving a single client representation would typically result in an admonition letter. Informant opted, in this case, to seek public reprimand due to the presence in the case of the aggravating factors of the 1998 admonition for three rule violations (including a communication rule violation), a refusal to timely acknowledge what went wrong in the case, and substantial (eight year) experience in the practice of law at the time of the misconduct. ABA Standards, Rule 9.32(a)(g)(i).

Lawyer sanction analysis is a cumulative and historical process. An admonition, especially one, as Mr. Farris' 1998 admonition was, for three different Rule violations, is a "shot across the bow," warning the lawyer to be more mindful of the violated Rules. There is, of course, the question of how many warning shots a lawyer should get before conduct otherwise meriting admonition becomes worthy of a public reprimand. Public reprimand does not, of course, limit a lawyer's ability to practice, but it is an intermediate step in the sanction process. Public reprimand is the appropriate step to have traversed in the event future, similar complaints are substantiated. For the foregoing reasons, public reprimand is the sanction recommended by Informant in this case.

CONCLUSION

Because more than a preponderance of evidence established Respondent Farris' violation of the communication rule, and because aggravating factors, including a prior admonition for a communication rule violation are present, public reprimand is the appropriate sanction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2005, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

Class mail to:

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Sharon K. Weedin

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 6,408 words, according to Microsoft Word, which is the word

processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Sharon K. Weedin

APPENDIX – VOLUME I

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF JURISDICTION.....3

STATEMENT OF FACTS.....4

POINTS RELIED ON19

POINTS RELIED ON20

ARGUMENT21

ARGUMENT28

CONCLUSION.....30

CERTIFICATE OF SERVICE.....31

CERTIFICATION: RULE 84.06(C).....31

APPENDIX – VOLUME I.....32

TABLE OF CONTENTS.....32

APPENDIX – VOLUME II.....33

TABLE OF CONTENTS.....33

APPENDIX – VOLUME II

TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF JURISDICTION..... 3

STATEMENT OF FACTS..... 4

POINTS RELIED ON 19

POINTS RELIED ON 20

ARGUMENT 21

ARGUMENT 28

CONCLUSION..... 30

CERTIFICATE OF SERVICE..... 31

CERTIFICATION: RULE 84.06(C)..... 31

APPENDIX – VOLUME I..... 32

TABLE OF CONTENTS..... 32

APPENDIX – VOLUME II..... 33

TABLE OF CONTENTS..... 33

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF JURISDICTION..... 3

STATEMENT OF FACTS..... 4

POINTS RELIED ON 19

POINTS RELIED ON 20

ARGUMENT 21

<u>ARGUMENT</u>	28
<u>CONCLUSION</u>	30
<u>CERTIFICATE OF SERVICE</u>	31
<u>CERTIFICATION: RULE 84.06(C)</u>	31
APPENDIX – VOLUME I.....	32
<u>TABLE OF CONTENTS</u>	32
APPENDIX – VOLUME II.....	33
<u>TABLE OF CONTENTS</u>	33
<u>TABLE OF CONTENTS</u>	1
<u>TABLE OF AUTHORITIES</u>	2
<u>STATEMENT OF JURISDICTION</u>	3
<u>STATEMENT OF FACTS</u>	4
<u>POINTS RELIED ON</u>	19
<u>POINTS RELIED ON</u>	20
<u>ARGUMENT</u>	21
<u>ARGUMENT</u>	28
<u>CONCLUSION</u>	30
<u>CERTIFICATE OF SERVICE</u>	31
<u>CERTIFICATION: RULE 84.06(C)</u>	31
APPENDIX – VOLUME I.....	32
<u>TABLE OF CONTENTS</u>	32
APPENDIX – VOLUME II.....	33
<u>TABLE OF CONTENTS</u>	33